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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**
14

15 IN RE: HIGH-TECH EMPLOYEE
16 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

17 THIS DOCUMENT RELATES TO:

18 ALL ACTIONS
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**DECLARATION OF JOHN P.
MITTELBACH IN SUPPORT OF
DEFENDANTS' JOINT
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

1 I, John P. Mittelbach, hereby declare and say:

2 1. I am an attorney with Munger, Tolles & Olson LLP, counsel of record for
3 Intel Corporation (“Intel”) in this case, and am admitted to practice before this Court. I
4 make this declaration in support of Defendants’ Joint Administrative Motion to File Under
5 Seal that is being filed concurrently with this Declaration. On behalf of Intel, I make this
6 declaration pursuant to Local Rules 79-5(d) and 7-11(a) to demonstrate compelling reasons
7 for the portions of the documents described below to be filed under seal. If called and
8 sworn as a witness, I could and would competently testify to the matters stated below.

9 2. I have reviewed the documents discussed below, and made specific,
10 narrowly tailored redactions where necessary to protect highly confidential and highly
11 sensitive Intel information regarding its compensation, hiring, and recruiting practices.

12 *The Reasons for Sealing the Redacted Information*

13 3. Except where explicitly noted, the grounds for Intel’s redactions identified
14 below are set forth in the Declaration of Tina M. Evangelista in Support of Plaintiffs’
15 Administrative Motion to File Under Seal Plaintiffs Notice of Motion and Motion for
16 Class Certification, and Memorandum of Law in Support, Docket Item 203 (Oct. 8, 2012)
17 (“Oct. 8, 2012 Evangelista Declaration”). The types of confidential Intel information
18 reflected in the documents at issue here are the same (or substantially similar) to the types
19 of confidential Intel information described in the Oct. 8, 2012 Evangelista Declaration. As
20 explained in the Oct. 8, 2012 Evangelista Declaration, the information at issue here reflects
21 confidential business information that gives Intel a competitive advantage in recruiting,
22 retaining, and compensating employees. Oct. 8, 2012 Evangelista Decl. ¶ 4. As set out in
23 the Oct. 8, 2012 Evangelista Declaration, (1) Intel derives independent economic value
24 from the strategic information and raw data contained in these documents not being
25 generally known to the public or to other persons who can obtain economic value from its
26 disclosure or use, *Id.* ¶ 5; (2) it is Intel’s practice to treat these documents and data as
27 confidential, and not to disclose them outside the company. *Id.* ¶ 6; and (3) the
28 information reflected in the documents at issue here quotes from, describes, or reflects

1 analysis of Intel's documents and data that have been designated "CONFIDENTIAL –
2 ATTORNEYS' EYES ONLY" ("AEO") pursuant to the Protective Order in this Action.

3 *The Intel Confidential Information that Should be Sealed*

4 4. Specifically, Intel seeks to seal the following highly confidential,
5 commercially sensitive information:

6 **Expert Report of Edward E. Leamer, Ph.D. (Oct. 28, 2013):**

7 The grounds for redactions of Intel confidential information in this document are
8 stated in the Declaration of Gregory Sergi in support of Defendants' Joint Response to
9 Plaintiffs' Administrative Motion to File Under Seal, Docket Item 580 (January 10, 2014)
10 ("Sergi Declaration") ¶ 4 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6,
11 8-9.

12 **Rebuttal Supplemental Expert Report of Edward E. Leamer, Ph.D. (July 12,
13 2013):**

14 The grounds for redactions of Intel confidential information in this document are
15 stated in the Declaration of Frank Busch in support of Defendants' Joint Response to
16 Plaintiffs' Administrative Motion to File Under Seal, Docket Item 466 (July 19, 2013)
17 ("Busch Declaration") ¶ 8 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6,
18 8-9.

19 **Supplemental Expert Report of Edward E. Leamer, Ph.D. (May 10, 2013):**

20 The grounds for redactions of Intel confidential information in this document are
21 stated in the Declaration of Krystal N. Bowen in support of Defendants' Joint Response to
22 Plaintiffs' Administrative Motion to File Under Seal Plaintiffs' Supplemental Motion in
23 Support of Class Certification and Related Documents, Docket Item 430 (May 17, 2013)
24 ¶ 8 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6, 8-9.

25 **Reply Expert Report of Edward E. Leamer, Ph.D. (Dec. 11, 2013):**

26 The grounds for redactions of Intel confidential information in this document are
27 stated in the Sergi Declaration ¶4 and the referenced Oct. 8, 2012 Evangelista Declaration
28 ¶¶ 3-6, 8-9.

Expert Report of Edward E. Leamer, Ph.D. (Oct. 1, 2012):

The grounds for redactions of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista Declaration ¶¶ 3-9.

Expert Report of Kevin F. Hallock (May 10, 2013):

The grounds for redactions of Intel confidential information in this document are stated in the Bowen Declaration ¶8 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6, 8-9.

Expert Report of Kevin F. Hallock (October 28, 2013):

The redactions relating to Intel confidential information in this expert report are the same information as addressed in Intel's redactions to the Expert Report of Kevin F. Hallock (May 10, 2013). The grounds for those redactions are stated in the Bowen Declaration ¶8 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6, 8-9.

Expert Report of Dr. Kevin Murphy, Ph.D. (Nov. 25, 2013):

The grounds for redactions of Intel confidential information in this document are stated in the Busch Declaration ¶¶ 4-9 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6, 8-9.

Expert Report of David Lewin, Ph.D. (Nov. 25, 2013):

The grounds for redactions of Intel confidential information in this document are stated in the Declaration of John Mittelbach in Support of Defendants' Joint Response to Plaintiffs' Administrative Motion to File Under Seal Portions of Plaintiffs' Motion To Exclude Expert Evidence Proffered by Defendants, Docket Item 588, (January 13, 2014) ("Mittelbach Declaration") ¶4 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6, 8-9.

Expert Report of Elizabeth Becker, Ph.D. (Nov. 25, 2013):

The grounds for redactions of Intel confidential information in this document are stated in the Mittelbach Declaration ¶4 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶ 3-6, 8-9.

Amended Expert Report of Edward Snyder (Dec. 6, 2013):

The grounds for redactions of Intel confidential information in this document are stated in the Mittelbach Declaration ¶4 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶3-6, 8-9.

Expert Report of Lauren J. Stiroh, Ph.D., (Nov. 25, 2013):

The grounds for redactions of Intel confidential information in this document are stated in the Sergi Declaration ¶4 and the referenced Oct. 8, 2012 Evangelista Declaration ¶¶3-6, 8-9.

Harvey Declaration: Ex. 140 (76512DOC000927): The document contains confidential Intel information regarding Intel's recruiting and hiring practices, including detailed instructions on Intel's policies and practices for making job offers.

Harvey Declaration: Ex. 142 (76545DOC000022): The grounds for redactions of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista Declaration ¶¶3-9. This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013, Docket Item 273.

Harvey Declaration: Ex. 143 (76550DOC000015): The grounds for redactions of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista Declaration ¶¶3-9. This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013, Docket Item 273.

Harvey Declaration: Ex. 145 (76566DOC000006): The grounds for redactions of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista Declaration ¶¶3-9. This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013, Docket Item 273.

Harvey Declaration: Ex. 146 (76566DOC000086): The grounds for redactions of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista Declaration ¶¶3-9. This document was sealed in its entirety pursuant to this Court's order dated January 15, 2013, Docket Item 273.

1 **Harvey Declaration:** Ex. 148 (76577DOC000219): The document, which is a
 2 white paper and supporting documents, contains confidential Intel information regarding
 3 Intel's recruiting and hiring practices, including specific data on Intel's hiring from
 4 particular companies. The confidential Intel information contained in the supporting
 5 exhibits is addressed in the concurrently filed Declaration of Kasia Hanson ¶¶ 4-8 and
 6 Declaration of Lawrence Achorn ¶¶ 4-10.

7 **Harvey Declaration:** Ex. 149 (76579DOC000715): The document contains
 8 confidential Intel information regarding Intel's recruiting and hiring practices, including
 9 detailed instructions on Intel's policies and practices for making job offers.

10 **Harvey Declaration:** Ex. 150 (76579DOC002324): The grounds for redactions
 11 of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista
 12 Declaration ¶¶3-9. This document was sealed in its entirety pursuant to this Court's order
 13 dated January 15, 2013, Docket Item 273.

14 **Harvey Declaration:** Ex. 152 (76582DOC000903): The document contains
 15 confidential information regarding Intel's compensation practices, including detailed
 16 discussion of Intel's methods for setting compensation, with specific examples applying
 17 Intel's confidential pay methods to particular jobs.

18 **Harvey Declaration:** Ex. 153 (76592DOC015614): The grounds for redactions
 19 of Intel confidential information in this document are stated in the Declaration of Tina
 20 Evangelista in Support of Defendants' Renewed Administrative Motion to Seal, Docket
 21 Item 287 (January 22, 2013) ("Jan. 22, 2013 Evangelista Declaration") ¶¶4-9. This Court
 22 approved these redactions in its Order dated September 30, 2013, Docket Item 509.

23 **Cisneros Declaration:** Ex. 391 (76583DOC003750): The grounds for redactions
 24 of Intel confidential information in this document are stated in the Declaration of Bradley
 25 S. Phillips in Support of Notice of Filing Revised Redacted Intel Corp. Documents Filed in
 26 Support of Defendants' Joint Response to Plaintiffs' Administrative Motion to File Under
 27 Seal Plaintiffs' Motion in Support of Class Certification and Related Documents, Docket
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1 Item 538 (January 22, 2014) (the “Phillips Declaration”) and the referenced Bowen
2 Declaration ¶¶4-10.

3 **Cisneros Declaration:** Ex. 393 (76583DOC002007): The grounds for redactions
4 of Intel confidential information in this document are stated in the Phillips Declaration and
5 the referenced Bowen Declaration ¶¶4-10.

6 **Cisneros Declaration:** Ex. 398 (76579DOC005956): The grounds for redactions
7 of Intel confidential information in this document are stated in the Phillips Declaration and
8 the referenced Bowen Declaration ¶¶4-10.

9 **Cisneros Declaration:** Ex. 399 (76582DOC000004): The grounds for redactions
10 of Intel confidential information in this document are stated in the Phillips Declaration and
11 the referenced Bowen Declaration ¶¶4-10.

12 **Cisneros Declaration:** Ex. 400 (765825DOC001211): The grounds for redactions
13 of Intel confidential information in this document are stated in the Phillips Declaration and
14 the referenced Bowen Declaration ¶¶4-10.

15 **Cisneros Declaration:** Ex. 478 (76616DOC12164): The grounds for redactions of
16 Intel confidential information in this document are stated in the Phillips Declaration and
17 the referenced Bowen Declaration ¶¶4-10.

18 **Cisneros Declaration:** Ex. 781 (76596DOC017010): The grounds for redactions
19 of Intel confidential information in this document are stated in the Phillips Declaration and
20 the referenced Bowen Declaration ¶¶4-10.

21 **Cisneros Declaration:** Ex. 2030 (McKell Declaration): The grounds for
22 redactions of Intel confidential information in this document are stated in the Phillips
23 Declaration and the referenced Bowen Declaration ¶¶4-10.

24 **Cisneros Declaration:** Ex. 2031 (76512DOC000638): The grounds for redactions
25 of Intel confidential information in this document are stated in the Oct. 8, 2012 Evangelista
26 Declaration ¶¶3-9. This document was sealed in its entirety pursuant to this Court’s order
27 dated January 15, 2013, Docket Item 273.
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1 **Cisneros Declaration:** Ex. 2033 (76657DOC004599): The grounds for redactions
 2 of Intel confidential information in this document are stated in the Phillips Declaration and
 3 the referenced Bowen Declaration ¶¶4-10.

4 **Cisneros Declaration:** Ex. 2035 (76657DOC019261): The grounds for redactions
 5 of Intel confidential information in this document are stated in the Phillips Declaration and
 6 the referenced Bowen Declaration ¶¶4-10.

7 **Cisneros Declaration:** Ex. 2043 (76657DOC016874): The document contains
 8 confidential information describing in detail Intel's compensation practices, including the
 9 manner in which it makes compensation decisions and establishes salary ranges.

10 **Cisneros Declaration:** Ex. HH (Deposition Testimony of Daniel McKell): The
 11 grounds for redactions of Intel confidential information in this document are stated in the
 12 Bowen Declaration ¶ 4-10.

13 *The Particularized Harm Disclosure Would Cause*

14 5. According to the Oct. 8, 2012 Evangelista Declaration, which addresses the
 15 same (or substantially similar) types of information as that which is redacted in the above-
 16 referenced documents, Intel would suffer particular harm if the redacted information is
 17 disclosed to the public. As stated in the Oct. 8, 2012 Evangelista Declaration, (1)
 18 disclosure of such information would put Intel at a significant competitive disadvantage in
 19 terms of its ability to identify, recruit, and compensate employees. Evangelista Decl. ¶ 8;
 20 (2) disclosure of such information would deprive Intel of its investment in developing
 21 strategies for recruiting and compensation. *Id.*; and (3) disclosure of such information
 22 would give Intel's competitors an unearned advantage by informing them of Intel's
 23 compensation strategies, compensation levels, and other related information. *Id.*

24 6. Because the information redacted in the above-referenced documents cannot
 25 be disclosed without causing particularized harm to Intel, it should be protected from
 26 public disclosure.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

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4 Executed this 21st day of February, 2014 at Los Angeles, California.

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7
8 /s/ John P. Mittelbach

9 John P. Mittelbach
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